

January 27, 2010

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Subject: Boulder Canyon Project Post-2017 Energy Planning and Management Program

**Introduction:** The following comments are presented on behalf of our current and future Native American Tribal Clients whose Tribal leaders are collectively and individually seeking economic self sufficiency for their Reservations through a variety of economic development programs. They are unanimous in their objective to stimulate economic self sufficiency. Their respective programs differ only in application and timing according to the practical issues associated with the location of their Reservation and the economic strength and viability of the surrounding region.

Our client relationships include Reservations located in three of the States included in Western's Desert Southwest Region. Each is a Federally recognized Indian Tribe. As such they are sovereign governmental entities. And as such they are afforded the right for government to government consultation and negotiations. Therefore, we suggest that any effort to process their allocation requests or to subject the authorization of delivery of their allocation through a State or State chartered agency is inappropriate.

Historically, access to low cost and reliable electrical power has been critical to the success of all economic development programs. Low cost and reliable electrical power is similarly important to the success of Reservation economic self sufficiency. Only a few Reservations are located in the midst of robust utility service areas. Most are located in fringe service areas where frequent service interruptions and capacity constraints are routine. Therefore, we endorse Western's efforts to include Tribal Utilities and Native American Reservations in their Power Marketing Initiative. Clearly, this effort to create a level playing field for the successful development and operations of each Reservation's economic development program is important.

**Discussion:** In response to Western's request for comments regarding the applicability of; 1) the PMI to the BCP; 2) the quantity of the resource to be extended to existing contractors; 3) the size of the proposed resource pool; 4) excess energy provisions, and 5) the term of contracts, we offer the following. Western should consider that both the economic development and utility world have substantially changed from the nineties when the PMI was initially adopted and these changes should be considered in the marketing of Post-2017 BCP power.

1. *The applicability of the PMI to the BCP.* Western's previous consideration of Native American power needs with respect to allocation and contract provisions for the Parker-Davis Project acknowledged the service access issues associated with serving Reservations. However, as noted certain utilities have been less than supportive in addressing transmission access for Tribal contractors by requiring third-party scheduling including the associated expense of those services. All of which are disproportionate with the relative size of the Tribe's allocations and the size of the utilities generation portfolio.

In contrast to this treatment of Tribal request for transmission access, we recently found that the utility is providing scheduling services at no cost for a non-tribal entity. Policy change or not, this action clearly suggests the presence of discriminatory influences.

The California ISO does not have transmission jurisdiction over the entire California electrical transmission grid or all electrical utility service territories within the Desert Southwest Region of California. Therefore, notwithstanding our previous comments regarding Tribal Sovereignty, a Western directive or legislation requiring delivery to CAISO, or other State agencies, is inappropriate and will result in an increase of conflicting regulatory directives that are already burdensome for the relatively small contract allocation for Tribal entities. In most cases the current Tribal electrical loads are being served by utilities who are Western contractors, we believe it would be more appropriate that the future contracts for these utilities contain a provision requiring non-discriminatory transmission access to Reservation contractors located within their respective service territories.

2. *The quantity of the resource to be extended to existing contractors.* The Notice regarding proposed contractor allocations is weighted in favor of the existing contractors who have already accrued substantial benefit from the BCP and minimizes the growth and status of new applicants. We concur that the original contractors obtained a vested interest in the BCP's first fifty years of power production. We also understand the allocation process for the succeeding thirty years, primarily due to the limited number of other qualified applicants. However, the electric utility industry has undergone a number of significant changes over the last twenty five years which has resulted in the creation or potential creation of numerous new entities who would seek to be contractors.

We suggest that in this third era of power contractor allocations having been a prior contractor is not a valid justification to assume a vested position for the Post-2017 allocations. We would also suggest, based upon the "Preference" power philosophy of the REA legislation that a greater emphasis be placed upon the economic self sufficiency efforts of Tribal and similar emerging entities.

Additionally, we question the presumption that the re-allocation for the traditional utility groups be maintained as status-quo. The increased needs of the various Tribal entities and their successful economic development activities warrant consideration of a greater resource pool. Therefore, we recommend that the pool for new applicants be increased to ten percent or greater, based upon the volume and capacity requests of the new applicants.

We recognize that the potentially greater number Tribal applicants may not effectively utilize a major portion of the capacity of the BCP resource. Therefore, to suggest that these new Tribal applicants would or could significantly disadvantage the existing contractors is inappropriate. But as time goes on, the electrical service requirements for these emerging economic entities will grow. Therefore, we suggest that the contract allocation of non-preference contractors be reduced by five percent for each five year contract period and the available resource be reallocated to the smaller preference qualified entities, through a proportionate increase to their Post-2017 allocation with additional consideration for new Reservation applicants.

3. *The size of the proposed resource pool.* For the reasons stated above we believe the proposed resource pool is inadequate both from the near term as well as the long term perspective. Yes, low cost power is important to any utility or utility customer. As the loads for the traditional utilities increase the impact of low cost BCP power diminishes over time. For some of these legacy utilities the imposition of the new RPS requirements could result in stranding certain power generation resources in their established generation portfolio. Unlike the large utilities the start-up Tribal Utility or Reservation based economic development program will derive a proportionately greater benefit from a BCP contract allocation.
4. *Excess energy provisions:* Tribal contractors generally have smaller electrical loads and do not have short term access for transmission services. Therefore, their ability to compete for excess energy provisions is in its-self discriminatory. The intrinsic benefit of excess energy is just as important to the smaller contractors as it is the larger. Therefore, we repeat our request that Western, in the new contracts, require that utility contractors provide non-discriminatory transmission services for both firm and excess energy for the smaller Tribal contractors who are located within their service territories.
5. *Terms of contract:* With the exception of our request to reduce the allocation of non-preference contractors by five percent each five years and to provide an opening for new Tribal allocations, we believe the proposed thirty year contract term is appropriate.

We also believe the proposed fifty year term and the other conditions the utility contractors are promoting through legislative action are unfair and discriminatory

for both current and future Tribal applicants. The proposed legislation clearly seeks to limit consideration for new Tribal applicants and by the proposed fifty year term intends to lock out all new applicants. Therefore, we respectfully request that Western proceed with the indentified BCP schedule.

Again, our existing and future Tribal clients appreciate the opportunity to provide these comments, and we are looking forward to working with Western to assure the equitable allocation of benefits associated with BCP. We will make ourselves available to address our requests for consideration in more detail.

Sincerely:

*Ralph E. Hitchcock*

Ralph E. Hitchcock, President